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April 18, 2024

Mark J. Langer, Clerk of the Court
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: Response to District of Columbia's April 17, 2024 Letter in *Pierre-Noel v. District of Columbia et al.*, No. 23-7057 (scheduled for oral argument on April 19, 2024 before Chief Judge Srinivasan, Judge Henderson, and Judge Rao):

Dear Mr. Langer:

This case presents a live controversy to which the Court can award effectual relief. In this case, Ms. Pierre requests the District provide K.N. assistance—transportation and supportive services—between his condo and the school bus so he can receive an appropriate education in school with his peers. *Pierre Br.* at 35. But the District continues to deny K.N. those services. Thus, the Court should order the District to provide K.N. with the transportation and supportive services he needs to attend school. Likewise, this case is live because the legal dispute is capable of repetition yet evading review. Again, the District is currently denying K.N. the transportation and supportive services he needs to attend school. And the legal question in this case—the scope of the IDEA's transportation and supportive service requirements—is a recurring legal question arising from the statute. *J.T. v. District of Columbia*, 983 F.3d 516, 526 (D.C. Cir. 2020).

Prospective Relief:

Because the District continues to refuse to transport K.N. between his home and the school bus, this Court should order the District to provide K.N. with the transportation and supportive services he needs to attend school. On March 11, 2024, Ms. Pierre enrolled K.N. in his neighborhood DCPS school: Plummer Elementary School. The District confirmed that Ms. Pierre's enrollment packet was completed on March 11, 2024. *Ex. 1.* And on April 2, 2024, the District informed Ms. Pierre that K.N. would attend Turner Elementary School because it has a Medical and Education Support program. *Ex. 2.* But the District continues to deny K.N. the transportation and supportive services he needs to attend school between his residence and the school bus. *Ex. 2* On about April 12, 2024, the District left Ms. Pierre a voicemail informing her that it will not transport K.N. between his residence and the school bus.

As a result, we request this Court award Ms. Pierre the same relief now that she requested in her opening brief: order the District to provide K.N. with the transportation and supportive services he needs between his residence and the school bus so he can receive an appropriate education with peers.

Retrospective Relief:

Ms. Pierre’s appeal of the hearing officer’s decision did not request compensatory education. Ms. Pierre did not request compensatory education because the hearing officer awarded her compensatory education for the District’s failure to transport K.N. from September 2022 to the dates of the due-process hearing held on December 1st and 2nd 2022. JA at 306. The District did not appeal that award. Ms. Pierre has not filed any claim for the period after the due-process hearing because those denials of FAPE are closely related to the issues in this appeal. And the outcome of this appeal will influence those future claims. A request for compensatory education for the period after the due-process hearing will be the subject of a separate administrative complaint or agreement between the parties.

Capable of Repetition But Evading Review:

This case is not moot because the dispute is capable of repetition yet evading review. “The capable of repetition but evading review exception applies if (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and, (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *J.T.*, 983 F.3d at 523. As the District concedes, this matter satisfies the evading-review prong. Regarding the capable-of-repetition prong, this issue is capable of repetition because it is repeating. The District continues to deny K.N. the transportation and supportive services he needs to attend school with peers. Put differently, the complaining party—K.N. through his mother—is being subjected to the same action again. And the legal question in this case is a recurring legal question arising from the statute: the scope and meaning of the IDEA’s transportation and supportive service requirements. As the District conceded in its letter yesterday, “the District could face the same legal questions presented in this case in future cases.” Because this dispute is capable of repetition but evading review, it presents a live controversy.

Sincerely,

/s/ Charles A. Sibert
Charles A. Sibert

Enclosed: Exhibits 1 and 2.

cc: All counsel (via ECF)

----- Forwarded message -----

From: **DCPS Enrollment** <noreply@seamlessdocs.com>

Date: Mon, Mar 11, 2024 at 1:45 PM

Subject: Document Completed: DCPS SY2023/2024 Enrollment Packet - English - ver 2

To: <pmargda@gmail.com>



Submission Completed

All signers signed this document. The signature flow for this submission is now complete.

Form name

DCPS SY2023/2024 Enrollment
Packet - English - ver 2

District of Columbia Public Schools | [1200 First St NE Washington, DC 20002](#)



Division of Specialized Instruction
1200 First Street NE, 8th Floor
Washington, DC 20002

Margda Pierre-Noel
4473 B Street SE, 101
Washington, DC 20019

April 2, 2024

Dear Margda Pierre-Noel:

This letter is to inform you that Turner ES has been identified as [REDACTED] location of service. Turner ES is able to implement [REDACTED] Individualized Education Plan (IEP) and provide them with the specialized instruction and/or related services to which they are entitled. Turner ES is located at 3264 Stanton Rd. SE Washington, DC 20032.

The location of service decision was based on the most recent IEP and Turner ES is the Medical & Education Support location in the Ballou HS boundary.

Please be aware that as a parent of a student with a disability, you have certain protections under the procedural safeguards of the Individuals with Disabilities Act (IDEA). Please refer to the copy of the procedural safeguards you received at the last IEP meeting. If you need a new copy of the procedural safeguards or you have any questions about your rights, you may contact the Division of Specialized Instruction at dcps.specialed@k12.dc.gov or the Office of the Student Advocate at (202) 741-4692 or student.advocate@dc.gov for assistance. You may also contact the Advocates for Justice and Education (AJE-DC), (202) 678-8060, which is a parent organization available to help you understand provisions of IDEA.

We look forward to welcoming [REDACTED] to the new location. You may contact the LEA Representative, Lashonda Battie at (202) 645-3470 with any specific questions regarding the program at Turner ES.

Sincerely,

Regina Grimm
Senior Deputy Chief,
Division of Specialized Instruction
District of Columbia Public Schools